

HOUSE BILL 543

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2lr0555

By: **Delegates Hough, Afzali, Cluster, Eckardt, Kach, Krebs, McComas, McDermott, Mitchell, Ready, Simmons, Smigiel, and Waldstreicher**

Introduced and read first time: February 3, 2012

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2012

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Victim–Offender Mediation Program**

3 FOR the purpose of ~~authorizing~~ requiring the establishment of a pretrial
4 victim–offender mediation program by the Chief Judge of the District Court;
5 requiring the Chief Judge of the District Court to establish procedures to
6 implement a certain victim–offender mediation program; establishing the
7 manner in which a certain defendant can be diverted to a certain
8 victim–offender mediation program; providing that a certain defendant under
9 certain circumstances is eligible for diversion to a certain victim–offender
10 mediation program; authorizing a court, under certain circumstances, to enter a
11 certain order; providing for certain procedures; establishing the requirements
12 that may be included in a certain mediation agreement in a certain
13 victim–offender mediation program; providing for the period for and conditions
14 under which a certain mediation agreement is valid; providing for the dismissal
15 of certain charges under certain circumstances; ~~requiring~~ authorizing the Chief
16 Judge of the District Court to establish a certain fee under certain
17 circumstances; providing for the construction of this Act; defining ~~a certain term~~
18 terms; and generally relating to a victim–offender mediation program.

19 BY adding to

20 Article – Criminal Procedure

21 Section 11–1101 through ~~11–1105~~ 11–1106 to be under the new subtitle

22 “Subtitle 11. Victim–Offender Mediation Program”

23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2008 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

SUBTITLE 11. VICTIM–OFFENDER MEDIATION PROGRAM.

11–1101.

(A) IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “DOMESTIC VIOLENCE” MEANS ABUSE OCCURRING BETWEEN:

(1) CURRENT OR FORMER SPOUSES OR COHABITANTS;

(2) PERSONS WHO HAVE A CHILD IN COMMON; OR

(3) PERSONS CURRENTLY OR FORMERLY INVOLVED IN A DATING RELATIONSHIP.

(C) “~~ELIGIBLE~~ ELIGIBLE DEFENDANT” MEANS A PERSON WHO:

(1) IS AT LEAST 18 YEARS OLD;

(2) IS CHARGED WITH A MISDEMEANOR THAT IS NOT :

(I) AN ACT OF DOMESTIC VIOLENCE; OR

(II) A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE OR § 3–602 OF THE CRIMINAL LAW ARTICLE;

~~(2)~~ (3) DOES NOT HAVE A PENDING FELONY CHARGE; AND

~~(3)~~ (4) HAS NOT PREVIOUSLY BEEN CONVICTED OF A FELONY OR A MISDEMEANOR, OTHER THAN A MINOR TRAFFIC VIOLATION.

11–1102.

(A) THE CHIEF JUDGE OF THE DISTRICT COURT ~~MAY~~ SHALL ESTABLISH A PRETRIAL VICTIM–OFFENDER MEDIATION PROGRAM.

1 **(B) THE CHIEF JUDGE OF THE DISTRICT COURT SHALL ESTABLISH**
2 **PROCEDURES TO IMPLEMENT THE VICTIM-OFFENDER MEDIATION PROGRAM**
3 **UNDER THIS SUBTITLE.**

4 **11-1103.**

5 ~~**(A) AN ELIGIBLE DEFENDANT MAY FILE A PETITION TO HAVE THE**~~
6 ~~**CRIMINAL CASE IN WHICH THE DEFENDANT IS CHARGED DIVERTED FROM THE**~~
7 ~~**REGULAR CRIMINAL DOCKET TO THE VICTIM-OFFENDER MEDIATION PROGRAM.**~~

8 ~~**(B) THE STATE'S ATTORNEY MAY RECOMMEND TO REQUEST THE**~~
9 ~~**COURT THAT TO DIVERT AN ELIGIBLE DEFENDANT'S CASE BE DIVERTED FROM**~~
10 ~~**THE REGULAR CRIMINAL DOCKET TO THE VICTIM-OFFENDER MEDIATION**~~
11 ~~**PROGRAM.**~~

12 ~~**(C) THE COURT, BY ITS OWN MOTION, MAY DIVERT AN ELIGIBLE**~~
13 ~~**DEFENDANT'S CASE FROM THE REGULAR CRIMINAL DOCKET TO THE**~~
14 ~~**VICTIM-OFFENDER MEDIATION PROGRAM.**~~

15 **(B) THE STATE'S ATTORNEY SHALL INFORM THE VICTIM OR VICTIM'S**
16 **REPRESENTATIVE ABOUT THE VICTIM-OFFENDER MEDIATION PROGRAM, THE**
17 **RIGHT TO RESTITUTION, AND THE ABILITY TO SEEK A NO CONTACT ORDER.**

18 **11-1104.**

19 **(A) ~~A~~ IF A VICTIM OR VICTIM'S REPRESENTATIVE AND ELIGIBLE**
20 **DEFENDANT REACH AN AGREEMENT, A COURT MAY DIVERT THE CASE OF AN**
21 **ELIGIBLE DEFENDANT TO THE VICTIM-OFFENDER MEDIATION PROGRAM IF:**

22 ~~**(1) AFTER BEING INFORMED OF THE PROGRAM, THE RIGHT TO**~~
23 ~~**RESTITUTION, AND THE ABILITY TO SEEK A NO CONTACT ORDER, THE VICTIM OR**~~
24 ~~**VICTIM'S REPRESENTATIVE CONSENTS TO PARTICIPATION IN THE**~~
25 ~~**VICTIM-OFFENDER MEDIATION PROGRAM**~~ **THE COURT FINDS THAT THE VICTIM**
26 **OR THE VICTIM'S REPRESENTATIVE AND ELIGIBLE DEFENDANT HAVE**
27 **KNOWINGLY AND VOLUNTARILY CONSENTED TO THE MEDIATION AGREEMENT;**
28 **AND**

29 **(2) THE ELIGIBLE DEFENDANT:**

30 **(I) AGREES TO A WAIVER OF SPEEDY TRIAL RIGHTS; AND**

31 **(II) ENTERS INTO A ~~BINDING~~ MEDIATION AGREEMENT**
32 **UNDER THIS SUBTITLE;**

1 (III) AGREES TO ANY OTHER TERMS THAT THE COURT SETS
2 FOR THE CHARGE TO BE MARKED “STET BY VICTIM–OFFENDER MEDIATION” ON
3 THE DOCKET; AND

4 (IV) PAYS THE COSTS THAT WOULD HAVE BEEN ASSESSED
5 UNDER § 7–409 OF THE COURTS ARTICLE IF THE DEFENDANT WOULD HAVE
6 BEEN FOUND GUILTY OF THE CHARGE, UNLESS THE DEFENDANT IS UNABLE TO
7 PAY BY REASON OF INDIGENCY.

8 (B) A MEDIATION AGREEMENT SHALL BE:

9 (1) SIGNED BY THE ELIGIBLE DEFENDANT AND THE VICTIM OR
10 THE VICTIM’S REPRESENTATIVE; AND

11 ~~(2) RATIFIED BY THE STATE’S ATTORNEY IN A REQUEST FOR A~~
12 ~~COURT ORDER TO DOCUMENT AND APPROVE~~ INCORPORATED BUT NOT MERGED
13 INTO AN ORDER OF THE COURT, IF THE STATE’S ATTORNEY HAS RATIFIED THE
14 AGREEMENT AND THE COURT HAS APPROVED.

15 (C) A MEDIATION AGREEMENT OR COURT ORDER IMPOSING
16 ADDITIONAL SEPARATE REQUIREMENTS ON THE ELIGIBLE DEFENDANT AS A
17 CONDITION OF MARKING THE CHARGE “STET BY VICTIM–OFFENDER
18 MEDIATION” MAY REQUIRE:

19 (1) TESTING, COUNSELING, AND TREATMENT OF THE DEFENDANT
20 TO ADDRESS ALCOHOL OR DRUG ABUSE, MENTAL HEALTH, OR ANGER
21 MANAGEMENT;

22 (2) PAYMENT OF RESTITUTION OR OTHER AMOUNTS TO THE
23 VICTIM;

24 (3) THE PERFORMANCE OF COMMUNITY SERVICE;

25 (4) IF REQUESTED BY THE VICTIM OR THE VICTIM’S
26 REPRESENTATIVE, A CONDITION OF NO CONTACT; AND

27 ~~(5) ANY OTHER CONDITION THAT IS REASONABLY RELATED TO~~
28 ~~THE OFFENSE FOR WHICH THE DEFENDANT IS CHARGED~~ AGREED TO BY THE
29 VICTIM OR VICTIM’S REPRESENTATIVE AND ELIGIBLE DEFENDANT.

30 (D) UNLESS THE COURT ~~APPROVES,~~ VICTIM OR VICTIM’S
31 REPRESENTATIVE, AND ELIGIBLE DEFENDANT APPROVE AN EXTENSION OR
32 REDUCTION, A MEDIATION AGREEMENT IS ~~VALID~~ ENFORCEABLE FOR NO MORE

1 THAN ~~1 YEAR~~ 3 YEARS AFTER THE DATE ON WHICH THE ~~MEDIATION AGREEMENT~~
2 ~~IS RATIFIED~~ CASE IS MARKED "STET" ON THE DOCKET.

3 11-1105.

4 (A) ~~ONCE AN ELIGIBLE DEFENDANT ENTERS A VICTIM OFFENDER~~
5 ~~MEDIATION PROGRAM~~ A MEDIATION HAS BEEN APPROVED BY THE COURT:

6 (1) THE COURT MAY DEFER THE PROCEEDINGS BY MARKING THE
7 CHARGE "STET BY VICTIM-OFFENDER MEDIATION" ON THE DOCKET; AND

8 (2) EXCEPT IN A PROCEEDING CONCERNING THE MEANING OF A
9 MEDIATION AGREEMENT, ALL COMMUNICATIONS MADE IN THE PROGRAM ARE
10 CONFIDENTIAL AND MAY NOT BE INTRODUCED INTO EVIDENCE.

11 (B) IF AN ELIGIBLE DEFENDANT SATISFIES THE CONDITIONS OF THE
12 MEDIATION AGREEMENT, THE STATE'S ATTORNEY SHALL DISMISS THE CHARGE
13 BY ENTERING A NOLLE PROSEQUI.

14 (C) AN ELIGIBLE DEFENDANT'S CASE SHALL BE RETURNED TO THE
15 DOCKET AND PROCEED THROUGH THE CRIMINAL JUSTICE SYSTEM IF:

16 ~~(1) THE VICTIM OFFENDER MEDIATION DOES NOT RESULT IN A~~
17 ~~MEDIATION AGREEMENT; OR~~

18 ~~(2)~~ THE DEFENDANT FAILS TO SATISFY THE TERMS OF THE
19 MEDIATION AGREEMENT.

20 (D) IF AN ELIGIBLE DEFENDANT'S CASE IS RETURNED TO THE DOCKET
21 UNDER SUBSECTION (C) OF THIS SECTION, THE DEFENDANT RETAINS THE
22 RIGHTS THAT THE DEFENDANT POSSESSED BEFORE ENTERING THE
23 VICTIM-OFFENDER MEDIATION PROGRAM.

24 (E) ~~(1) IN ADDITION TO ANY OTHER FEES, FINES, OR COSTS, UNLESS~~
25 ~~THE COURT MAKES A FINDING ON THE RECORD THAT THE DEFENDANT IS~~
26 ~~UNABLE BY REASON OF INDIGENCY TO PAY THE COSTS, A DEFENDANT WHO~~
27 ~~PARTICIPATES IN A VICTIM OFFENDER MEDIATION PROGRAM SHALL PAY AN~~
28 ~~ADMINISTRATIVE FEE TO THE COURT.~~

29 ~~(2)~~ THE CHIEF JUDGE OF THE DISTRICT COURT ~~SHALL~~ MAY
30 ESTABLISH AN ADMINISTRATIVE FEE FOR THE VICTIM OFFENDER MEDIATION
31 PROGRAM THAT IS SUFFICIENT TO COVER THE COSTS OF THE PROGRAM A
32 COURT COST SUFFICIENT TO COVER ANY COSTS OF THE MEDIATION.

1 11-1106.

2 THIS SUBTITLE DOES NOT LIMIT THE ABILITY OF A STATE'S ATTORNEY'S
3 OFFICE TO:

4 (1) REFER A MATTER TO A COMMUNITY MEDIATION MODEL
5 PROGRAM AS DEVELOPED BY COMMUNITY MEDIATION MARYLAND OR THE
6 COMMUNITY CONFERENCING CENTER; OR

7 (2) FILE A PRETRIAL MOTION TO COMPROMISE A CHARGE OF
8 ASSAULT UNDER § 3-207 OF THE CRIMINAL LAW ARTICLE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.